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6 Attorney for JACOB KEITH COOPER

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9
10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.
14 TOTAL WEALTH MANAGEMENT, INC.,
et al.,

15 Defendant.

16 Case No. 15cv226-BAS (DHB)

17 **DEFENDANT JACOB
18 COOPER'S MOTION FOR
19 LEAVE TO FILE UNDER
SEAL DOCUMENTATION
REGARDING THE SOURCE
OF FUNDS FOR RETENTION
OF COUNSEL**

Date: n/a

Time: n/a

Judge: Hon. Cynthia Bashant

Place: n/a

Magistrate David H. Bartick

20 Pursuant to the Court's recent Order setting a briefing schedule (Dkt. 65),
21 Defendant Jacob Cooper ("Cooper"), by and through his counsel of record, hereby
22 moves the Court for entry of an Order allowing him to file under seal documentation
23 regarding the source of funds used to retain counsel and to file under seal the
24 corresponding motion for a determination of whether such funds are untainted and not
25 subject to clawback or seizure by Kristen A. Janulewicz, the Receiver appointed by the
26 Court (the "Motion"). The Motion should be granted because the identity of the
27 individual funding Cooper's defense and his/her personal financial information will
28 demonstrate that the funds are not related to or tainted by the alleged fraud.

1 Because the evidence will show the individual and his/her money is not related to these
 2 proceedings, this person's personal financial information should likewise be protected
 3 from public disclosure by sealing the documents and related filings.

4 **I. FEE INFORMATION IS GENERALLY NOT PRIVILEGED**

5 Cooper acknowledges that fee information is generally not privileged. *Fed. Sav.*
 6 & *Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374 (9th Cir. 1990). An exception exists
 7 when the "fee arrangements are inextricably linked to privileged communications" such
 8 that the "disclosure would convey information which ordinarily would be conceded to
 9 be part of the usual privileged communication between attorney and client." *Ralls v.*
 10 *United States*, 52 F.3d 223, 224-25 (9th Cir. 1995) (internal quotations omitted). In
 11 *Ralls*, the government sought the identity of the individual who hired an attorney for a
 12 criminal defendant and the amount paid. The court found the identity of the attorneys'
 13 fee payer to be privileged where that same fee payer sought the advice of the attorney
 14 regarding his own involvement in the alleged crime. *Id.*, at 225-26. Therefore, the
 15 payment of the fees itself was a privileged communication because it showed the fee
 16 payer's involvement in the crime.

17 The circumstances relating to Cooper's representation is the opposite because
 18 Cooper desires to show that the source of the funds to hire counsel is not related to these
 19 proceedings. The funds are untainted by the alleged fraud. *S.E.C. v. Dowdell*, 175 F.
 20 Supp. 2d 850, 854-55 (W.D. Va. 2001); *S.E.C. v. Private Equity Mgmt. Group, Inc.*, No.
 21 CV 09-2901, 2009 WL 2058247, at *2-4 (C.D. Cal. July 9, 2009) (noting defendant
 22 could obtain the release of frozen assets if not tainted by the alleged fraud). Where
 23 funds are untainted, they are not subject to a freeze order and clawback. *See Private*
 24 *Equity Mgmt.*, 2009 WL 2058247, at *3. Therefore, information related to the source of
 25 the funds is likely not a privileged communication. Nevertheless, the information
 26 should be protected from public disclosure and sealed for the reasons stated below.

II. FEE INFORMATION RELATED TO COOPER'S DEFENSE SHOULD BE SEALED

The documents and information that Cooper intends to file will identify the source of the funds paying his legal defense costs, including both the identity of the individual as well as his/her banking and other financial records. This information should not be publicly available, even if it is not privileged, because the information will reveal the individual and the source of the funds are entirely unrelated to these proceedings. Because the individual and their personal financial information is unrelated to this case, as opposed to connected to the alleged crime, there is good cause to maintain his/her privacy. *See, e.g., Dynetix Design Solutions Inc. v. Synopsys Inc.*, No. 11-cv-5973, 2013 WL 2285210, at *1 (N.D. Calif. May 23, 2013). In other words, a third-party's personal financial records should not be exposed to the public when that information will demonstrate that they are not involved in the alleged fraud or the case generally. Additionally, the personal financial information is the type of information that parties frequently redact from filings. *See, e.g. Fed. R. Civ. P. 5.2; Electronic Case Filing Administrative Policies and Procedures Manual United States District Court for the Southern District of California*, 1.h. Finally, public policy favors allowing an individual to protect their privacy and their personal financial information when his/her connection to a case is largely limited to paying attorneys' fees for another. For this reason, Cooper's request to file under seal documents and information regarding the source of funds used to retain counsel and to file under seal the corresponding motion for a determination of whether such funds are untainted and not subject to clawback or seizure by the Receiver should be granted.

Dated: January 20, 2016.

DURHAM JONES & PINEGAR, P.C.

/s/ Jessica G. Peterson
Attorney for Jacob Keith Cooper

PROOF OF SERVICE

Code Civ. Proc. § 1013a(3)

I, Kristin Hughes, hereby declare I am employed in the County of Salt Lake, State of Utah. I am over the age of 18 and not a party to the within action. My business address is Durham Jones & Pinegar, 111 East Broadway, Suite 900, Salt Lake City, UT 84111.

On January 20, 2016, I served the foregoing document described as **MOTION FOR LEAVE TO FILE UNDER SEAL** on all interested parties in this action as set forth on the attached service list in the following manner:

BY MAIL: I am familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Salt Lake City, Utah in the ordinary course of business. I am aware that on motion of the party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FACSIMILE: In addition to service by mail as set forth above, a copy of said document(s) was also delivered by facsimile transmission to the addressee(s) pursuant to Code of Civil Procedure §1013(e).

BY OVERNIGHT MAIL: I caused said document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

BY PERSONAL SERVICE: By causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth on the attached service list.

(CM/ECF): I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send electronic notification of such filing to interested parties in this action.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

Executed on January 20, 2016, at Salt Lake City, Utah

/s/ Kristin Hughes
Kristin Hughes